

APPLICANT:
Mark F. Tress

REQUEST: A variance to permit
an in-ground swimming pool within the
recorded Forest Retention area in the
R2 District

HEARING DATE: May 24, 2006

BEFORE THE
ZONING HEARING EXAMINER
FOR HARFORD COUNTY
BOARD OF APPEALS
Case No. 5534

ZONING HEARING EXAMINER'S DECISION

APPLICANT: Mark F. Tress

LOCATION: 507 Summervale Road – Development of Summervale, Bel Air
Tax Map: 40 / Grid: 4F / Parcel: 243 / Lot: 4
Third (3rd) Election District

ZONING: R2 / Urban Residential

REQUEST: A variance, pursuant to Sections 267-30.14 and 267-26C(6) of the Harford County Code, to permit an accessory structure within the recorded Forest Retention Area in the R2 District.

TESTIMONY AND EVIDENCE OF RECORD:

The subject property is located at 507 Summervale Road, and is an approximately 18,000 square foot parcel in the development of Summervale, located just outside of Bel Air. The property is improved by a two-story colonial. An existing above-ground pool is located on the property which the Applicant wishes to replace with an in-ground, 16 foot wide by 35 foot long pool. The installation of the in-ground pool would require the requested variance.

Mark Tress testified that he, his wife, and two children have resided on the property for about 12 years. The Applicant is the original owner. The subject property, while it lies in the development of Summervale, actually backs up to the intersection of Locust Road and Vale Road.

Mr. Tress explained that his property is very heavily impacted by a Forest Retention Area. He believes that placing a Forest Retention Area on private property is now discouraged by Harford County, but was allowed at the time his lot was created. The shape of his lot is also somewhat unusual and, combined with the Forest Retention Area, leaves little buildable area beyond the house footprint. Approximately 60% of his lot is actually encumbered by the Forest Retention Area.

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Mr. Tress explained that the pool cannot be located on either side of the house, and it would also impact the neighbors if located off either side. Furthermore, for structural reasons, the pool cannot be located any closer than 8 feet from the foundation of the existing home. Accordingly, the only allowable location for the pool would impact the Forest Retention Area by approximately 12 feet.

Mr. Tress also explained that the existing above-ground pool has been located in the exact area as proposed for the in-ground pool for over ten years with no problem. Mr. Tress did not know he was impacting the Forest Retention Area with the above-ground pool. There are few trees in the area and there is no physical or visual indication that the use of the property is restricted in any fashion.

The Applicant has contacted his adjoining neighbors and each has expressed his or her lack of opposition to, and indeed support for, the requested variance.

For the Applicant testified Raymond Harrington of Boardwalk Pools. Mr. Harrington explained that excavation will be necessary to create the in-ground pool. It will be a one piece fiberglass pool which has less impact than a concrete pool. Mr. Harrington explained that the excavation must stay away from the foundation by at least 8 feet. The pool must also have a 3 foot concrete decking surrounding it. In Mr. Harrington's opinion there is no other location on the property for such a pool except as that proposed.

Next for the Harford County Department of Planning and Zoning testified Anthony McClune. Mr. McClune stated that the property is clearly unique. The lot is the largest lot in its subdivision, but is a corner lot and as such is very oddly shaped. The front part of the lot is much more narrow than the rear part. Accordingly, the pool cannot be located on either side of the existing house. More significantly, however, approximately 60% of the lot is encumbered by a Forest Retention Area. There is no significant forest growth, however, within this area. According to Mr. McClune, the Department does not now typically allow this amount of forest retention on lots this small. He does not believe there will be any adverse impact to the area, nor will there be any adverse impact to water quality. Mr. McClune also stated that the type of pool requested by the Applicant is similar to others in the neighborhood. The Department recommends approval.

According to the Staff Report, the Applicant has further been informed that there is no active Homeowners Association.

There was no evidence or testimony presented in opposition.

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APPLICABLE LAW:

Section 267-30.14 of the Harford County Code states:

- “A. The Board of Appeals may grant a variance to this Article in accordance with this Section and Section 267-11 of this chapter.*
- B. In granting a variance to this Article the Board shall issue specific written findings of fact demonstrating that the granting of the variance will not adversely affect water quality.”*

Section 267-26C(6) of the Harford County Code states:

“No accessory use or structure, except fences, shall be located within any recorded easement area.”

Section 267-11 of the Harford County Code allows the granting of a variance to the requirements of the Code:

“Variances.

- A. Except as provided in Section 267-41.1.H., variances from the provisions or requirements of this Part 1 may be granted if the Board finds that:*
 - (1) By reason of the uniqueness of the property or topographical conditions, the literal enforcement of this Part 1 would result in practical difficulty or unreasonable hardship.*
 - (2) The variance will not be substantially detrimental to adjacent properties or will not materially impair the purpose of this Part 1 or the public interest.*
- B. In authorizing a variance, the Board may impose such conditions regarding the location, character and other features of the proposed structure or use as it may deem necessary, consistent with the purposes of the Part 1 and the laws of the state applicable thereto. No variance shall exceed the minimum adjustment necessary to relieve the hardship imposed by literal enforcement of this Part 1. The Board may require such guaranty or bond as it may deem necessary to insure compliance with conditions imposed.*

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- C. *If an application for a variance is denied, the Board shall take no further action on another application for substantially the same relief until after two (2) years from the date of such disapproval.”*

FINDINGS OF FACT AND CONCLUSIONS OF LAW:

Initially, it is found that the granting of the variance will not adversely affect water quality. This finding is based upon the opinion of the Harford County Department of Planning and Zoning. Furthermore, a review of the photographs in the file show that the rear yard of the subject property is a typical rear yard, similar to others located throughout Harford County. It is improved by attractive landscaping and trees. It is obviously not in any way designated as a Forest Retention Area. There are no obvious features which would indicate to any passer-by that the rear yard of the subject property was anything other than an unencumbered, unrestricted backyard. There are no obvious drainage elements on the property. No drainage element or landscaping or shrubbery of any nature will be disturbed by the granting of the variance.

It is accordingly found that Section 267-30.14 is met in that the variance would not adversely affect water quality.

The variance itself should be granted. The Applicant suffers from a classical uniqueness. The property is, to begin with, a uniquely shaped lot within its subdivision. It is at the corner of a court, adjoining to its rear streets which intersect at right angles. The front part of the lot is narrow; the rear part is wider. This makes the property somewhat larger than others in the subdivision, but it is impacted more than any other property by a Forest Retention Area which serves no obvious purpose. No forest is being retained. The Forest Retention Area, impacting 60% of the buildable space on the lot, and at the same time serving no useful or measurable purpose, is obviously a unique hardship.

The variance requested is very minor. An in-ground pool will be replacing an above-ground pool at the exact location of the above-ground pool. The encroachment within the Forest Retention Area will be minor, and is only necessitated by the need to maintain a pool no closer than 8 feet of the existing foundation. The Applicant has acted to minimize the variance by locating the pool as close to the house as possible.

There will be no adverse impact on any adjoining neighbor or neighborhood and, indeed, the improvement to be made should be a benefit to the subject property.

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CONCLUSION:

For the above reasons it is recommended the requested variance be granted subject to the following conditions:

1. The Applicant obtain all necessary permits and inspections for the construction of the pool.
2. The Applicant shall submit to the Department for review and approval a landscaping plan for the area around the pool.

Date: June 26, 2006

ROBERT F. KAHOE, JR.
Zoning Hearing Examiner

Any appeal of this decision must be received by 5:00 p.m. on JULY 26, 2006.